

3/26

30 JUN 1982

EIN: [REDACTED]

Gentlemen:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

The information submitted discloses that you were incorporated under the nonprofit corporation laws of the State of [REDACTED] on [REDACTED].

Your corporation's purpose is stated in Article 3 of its Articles of Incorporation. That provision reads as follows:

"3. The public purposes of the corporation are educational; to promote public awareness, training, and access to dance and other performance arts, and to engage in any educational enterprise related to the arts in general."

Your corporation's purpose and activities are summarized in Form 1023 Part III 3. That summary reads as follows:

"[REDACTED]'s sole business at present is the operation of "[REDACTED]" dance company, a performing company of modern dancers. [REDACTED]' activities presently include performances and demonstration dances. Planned activities include lectures and demonstrations for groups and schools and classes and workshops both for professional dancers, students, children and other members of the public.

Presently the dance company is in the rehearsal stage for a performance scheduled to commence in or around [REDACTED]. The company recently completed a dance run in [REDACTED]. Copies of the program and announcements of the performance are attached."

[REDACTED]

In a document headed "Proposed Budget for Year Ending [REDACTED]" you explain where your activities will be conducted. That document reads, in part, as follows:

"The company has determined that in [REDACTED], performances will be conducted only in existing theaters and nightclubs and not through our own productions".

In a letter dated [REDACTED] we requested additional information about your application for recognition of exemption from Federal income tax so that we could determine the nature of your operation. You responded in a letter dated [REDACTED].

We asked you to state how often you expected to perform in nightclubs. You responded as follows:

"At present, [REDACTED] performances are scheduled at a nightclub, in [REDACTED], followed by a break. After that, there will be [REDACTED] shows per Sunday in August for a total of [REDACTED] more. No other nightclub performances are scheduled."

We asked you to define what you meant by the term "nightclub". You responded as follows:

"We use the term "nightclub" in its commonly accepted meaning: "a place of entertainment open at night for eating, drinking, etc., often having a floor show" (Webster's New Twentieth Century Dictionary, Unabridged, Second Edition). Generally, the night clubs at which we appear are commercial enterprises."

We asked you if any officer or director of the corporation would be employed by the corporation. We asked you to explain the basis of any such individual's compensation. You responded as follows:

"The Board of Directors recently voted to accept [REDACTED], who is the secretary of the Board of Directors, as the company manager. Her compensation will consist of [REDACTED]% of the value of all her bookings for the company. The amount was arrived at by determining the average going rate for "agents" or "managers" of dance companies in the [REDACTED] Area. The company has struggled for its entire history without a manager, with theater bookings and productions being conducted by the director/choreographers and by volunteers. It is hoped that the manager will be able to take a lot of the burden from the shoulders of the artists."

Section 501(c) of the Internal Revenue Code of 1954 describes certain organizations exempt from income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Regs. 1.501(c)(3)-1(e)(i) provide that an organization may not be exempt if it has as its primary purpose, the carrying on of a trade or business. IRC 162 defines the term "trade or business" to include any activity carried on for the production of income from the sale of goods or performance of services.

Rev. Rul. 78-385, 1978-2 C.B. 174 held that income derived from the sale of commercially sponsored programs by a nonprofit broadcasting organization described in IRC 501(c)(3), was income from a trade or business not related to the organization's exempt purpose.

From the information submitted, it appears that your organization will be primarily engaged in the sale of entertainment services to commercial enterprises. It appears that you intend to operate in a manner similar to commercial entities engaged in that business. You have hired a manager who will be responsible for bookings. It appears that this action was directed to a goal of increased income. From the information submitted by you, it appears that your primary purpose is the operation of a trade or business.

The payment of dividends by an organization to its shareholders is inurement. Distributions based on a percentage of profits or gross receipts are similar in nature to dividends. The officers and directors who control a nonstock corporation are in fact its shareholders. Your manager is also a director of your corporation. That individual will be paid █% of the value of her bookings. Those payments constitute inurement.

We have concluded that you are not entitled to exemption from Federal income tax as an organization described in Section 501(c)(3) of the Code, inasmuch as you are not organized and operated exclusively for one or more of the exempt purposes specified in that section.

[REDACTED]

You are required to file Federal income tax returns annually, with your district director.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

You have the right to protest this determination if you believe it is incorrect. Protest instructions are contained in Publication 892 enclosed. If we do not hear from you within the time specified, this letter will become our final determination in this matter.

If you agree to the adverse action shown above, please sign and return one copy of the enclosed Form 6013, Consent to Proposed Adverse Action, within ten days of this letter. You should retain a copy for your record.

Sincerely yours,

District Director

Enclosures:  
Publication 892  
Form 6013